

General Information Letter: Explanation of principles for determining residency.

June 7, 2006

Dear:

This is in response to your letter dated May 19, 2006, in which you request advice. Department of Revenue ("Department") regulations require that the Department issue only two types of letter rulings, Private Letter Rulings ("PLRs") and General Information Letters ("GILs"). PLRs are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. GILs do not constitute statements of agency policy that apply, interpret or prescribe the tax laws and are not binding on the Department. For your general information, the regulation governing the issuance of letter rulings, 2 Ill. Adm. Code Part 1200 regarding rulings and other information issued by the Department, can be accessed at the Department's website. That address is [www.revenue.state.il.us/legalinformation/regs/part1200](http://www.revenue.state.il.us/legalinformation/regs/part1200).

The nature of your question and the information provided require that we respond only with a GIL.

In your letter you state as follows:

I am an income tax preparer and I was asked by 2 of my clients if they have to prepare Illinois returns. I told them that based upon their individual situations, they had to file Illinois income tax returns. However, I am unsure and I want a legal opinion as to whether they are legally responsible to file Illinois returns.

Situation 1: John Smith was a resident of Illinois and moved to Mexico. However, he continues to use his former Illinois address as a mailing address (his friend lives there). He owns bank accounts in Illinois and receives interest from them. He also receives a pension from Illinois and uses this Illinois address on his federal income tax return. He also still has an Illinois Driver's License. He only moved to Mexico because he got married and has children in high school there. He has lived there 2 years and plans to move to Texas when his children graduate from high school. Is he required to file an Illinois return or should he file an Illinois return as a non-resident?

Situation 2: Jane Doe is a resident alien from Poland. She and her husband came to Illinois because he got a job in Chicago. She owns a business in Poland. They lived here for 2 years and returned to Poland. They continue to use a relative's address as a mailing address. They have a bank account here in Illinois and also Illinois Drivers Licenses. Her husband is still employed by this Chicago firm but works out of his home in Poland. Every year they spend 7 months in Poland and 3 months in Illinois on business. They file a federal return with their Illinois mailing address. Are they required to file an Illinois return and are they considered Illinois residents or non-residents? How is the wife's business income from Poland treated?

Please respond and let me know how to advise my clients.

**Ruling by Department**

In response to your inquiries, please be advised that Illinois Income Tax Act ("IITA") Section 502(a) governs the filing of returns and provides as follows:

(a) In general. A return with respect to the taxes imposed by this Act shall be made by every person for any taxable year:

(1) For which such person is liable for a tax imposed by this Act, or

(2) In the case of a **resident** or in the case of a corporation which is qualified to do business in this State, for which such person is required to make a federal return, regardless of whether such person is liable for a tax imposed by this Act. However, this paragraph shall not require a resident to make a return if such person has an Illinois base income of the basic amount in Section 204(b) or less and is either claimed as a dependent on another person's tax return under the Internal Revenue Code of 1986, or is claimed as a dependent on another person's tax return under this Act. (emphasis added).

Therefore, in either of the situations you mention, if the individual in question owes Illinois income tax, he or she will be required to file an IL-1040. Additionally, if the individual in either situation is a resident, he or she will be required to file an IL-1040 if he or she must also file a US 1040, unless they fall within the exceptions provided under IITA 502(a)(2).

Due to the extremely fact-sensitive nature of the issue, the Department does not issue ruling letters regarding an individual's residency. Rather, we refer you to the regulations on this topic, which begin with 86 Ill. Adm. Code 100.3020, and can be found at the Department's web-site, which is:

[www.revenue.state.il.us/legalinformation/regs/part100](http://www.revenue.state.il.us/legalinformation/regs/part100)

Please be advised that 86 Ill. Adm. Code 100.3020(f) states as follows:

f) Presumption of residence and nonresidence. If an individual spends in the aggregate more than nine months of any taxable year in Illinois it will be presumed that he is a resident of Illinois. An individual who is absent from Illinois for one year or more will be presumed to be a nonresident of Illinois. These presumptions are not conclusive, and may be overcome by other satisfactory evidence to the contrary. (emphasis added).

Without more, the facts in Situation 1 sound as if they would be governed by the aforementioned presumption, and the individual in question would be considered a non-resident.

The facts in Situation 2 do not lend themselves to a ready answer, as the intent of the individuals would be controlling. Suffice it to say, if Illinois income tax is due, then they would need to file an IL-1040. Since a federal return is filed, then an IL-1040 would also likely be due even if they are non-residents.

All income received by a resident is allocated to this state for taxation purposes. IITA 301(a). You don't give details regarding the wife's business. We can state generally that, in the case of a non-resident, business income is currently apportioned to Illinois based on the sales factor: i.e., the amount of sales attributable to Illinois divided by total sales, with the resulting percentage multiplied

times business income. IITA 301(c) and 304

As stated above, this is a GIL which does not constitute a statement of policy that applies, interprets or prescribes the tax laws, and it is not binding on the Department. If you wish to obtain a PLR which will bind the Department with respect to the application of the law to specific facts, please submit a request conforming to the requirements of 2 Ill. Adm. Code Part 1200.

Sincerely yours,

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